

BEFORE THE PUBLIC UTILITIES COMMISSION STATE OF COLORADO

Proceeding No. 18F-0866E

DELTA-MONTROSE ELECTRICAL ASSOCIATION,

COMPLAINANT,

V.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.,

RESPONDENT

**MOTION FOR LATE INTERVENTION AND ENTRY OF APPEARANCE OF
LA PLATA ELECTRIC ASSOCIATION, INC.**

La Plata Electric Association, Inc. (“LPEA”), by and through its undersigned counsel, Dietze and Davis, P.C., pursuant to 4 CCR 723-1, Rule 1401, and particularly Rule 1401(a), respectfully moves for an order of the Public Utilities Commission of the State of Colorado (“Commission”) granting LPEA leave to intervene out of time in the above-captioned Complaint of Delta-Montrose Electric Association (“DMEA”). As grounds for this motion, LPEA states as follows:

I. Conferral:

1. In accordance with the requirements of Rule 1400(a) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-1400(a), counsel for LPEA has consulted with counsel both for DMEA and for Tri-State and has been advised as follows:

A. DMEA takes no position on the requested relief at this time, but has reserved its right to respond; and,

B. Counsel for LPEA spoke with counsel for Tri-State on the afternoon of January 24, 2019. Counsel for Tri-State advises that Tri-State takes no position on this motion, but reserves the right to respond to this motion.

II. Grounds for Intervention:

2. LPEA is a Colorado nonprofit electric corporation in good standing. LPEA is also a cooperative electric association, as defined at Colo. Rev. Stat. § 40-9.5-102. LPEA has been deregulated from Commission rate jurisdiction in accordance with Colo. Rev. Stat., § 40-9.5-103 and 104. LPEA is governed by a twelve member Board of Directors, which have authorized the filing of this motion.

3. LPEA presently serves approximately 36,952 residential and 6,474 commercial accounts. The mission of LPEA is to provide its ratepayer/members safe, reliable electricity at the lowest reasonable cost while being environmentally responsible. LPEA was organized August 5, 1939.

4. LPEA is also a Colorado member cooperative of Tri-State Generation and Transmission Association, Inc., (Tri-State). LPEA purchases electricity from Tri-State pursuant to a contract, in much the same manner as Delta-Montrose Electrical Association, but with the needs and obligations of its own ratepayer/members in mind.

5. LPEA supports the position of DMEA with respect to the jurisdiction of this Commission over Tri-State in this particular matter. LPEA also supports the determination by this Commission of the question whether Tri-State's exit charges are unjust and unreasonable, and whether the exit charges are discriminatory.

II.A. Specific Grounds and Interests which Justify Intervention.

6. LPEA was a party to a related case in 2013 involving Tri-State and the jurisdiction of this Commission over Tri-State. That case was captioned as *La Plata Electric Association, Inc. et al. v. Tri-State Generation and Transmission Association, Inc.*, Proceeding No. 13F-0145E. In addition, LPEA has been in the past, and continues to be, a proponent of the position that this Commission must be able to assert jurisdiction over Tri-State when warranted by the facts and the law.

7. LPEA has a specific interest, pursuant to its mission and the financial interest of its ratepayer/members, to ensure that its energy needs of its customers are met fairly, reasonably, and without discrimination, both in terms of its contractual relations and in the determination of the rates which must be charged to its ratepayer/members.

8. LPEA is presently evaluating its power supply contract with Tri-State through the power supply committee of the LPEA Board of Directors, a committee whose sole purpose is to study LPEA's power supply options, costs, and related matters. DMEA's complaint is of vital importance to LPEA's ratepayer/members as the Commission's adjudication of this complaint could have a significant and substantial impact on LPEA's ratepayer/member's rates.

II.B. Claims or defenses within the scope of the Commission's jurisdiction.

9. LPEA may rely on prior Commission orders, adjudications, associated rulemakings, underlying statutes, and judicial decisions granting authority to the Commission to decide upon the electric utility matters before it in the public interest, including, but not limited to the Commission's decision in Proceeding No. 13F-0145E. If permitted to participate as an

intervenor in this proceeding, LPEA reserves the right to raise additional claims or defenses as its interests may appear.

II.C. The Subject Proceeding May Substantially Affect the Pecuniary or Tangible Interests of the Movant.

10. LPEA has a tangible and pecuniary interest in ensuring that the energy needs of its customers are met at rates that are just and reasonable. The determination of matters in this proceeding, including whether the exit charges proposed by Tri-State are unjust, unreasonable or discriminatory, and possibly establishing just, reasonable and non-discriminatory exit charges for DMEA as a Tri-State member cooperative, may all affect LPEA and its ratepayer/members. Such determinations, including the establishment of processes to determine appropriate exit charges, may have substantial and long-term precedential effects upon LPEA. Either the relief sought by DMEA in this proceeding, or a decision in favor of Tri-State in this proceeding, may have a substantial and long-term effects upon rates charged by LPEA to its ratepayer/members

II.D. The Movant's Interests or Those It May Represent Would Not Otherwise Be Adequately Represented.

11. No other party represents LPEA's interests. LPEA's interests with respect to both its relationship with Tri-State, and its responsibilities to over 40,000 LPEA ratepayer/members, are unique in that they arise from specific agreements, and from LPEA's articles of incorporation, bylaws, mission and policies.

III. Good Cause for Intervention Out of Time

12. Commission Rule of Practice and Procedure 1401(a) provides, in pertinent part, "[t]he Commission may, for good cause shown, allow late intervention, subject to reasonable

procedural requirements.” LPEA respectfully requests that this Commission grant LPEA’s request to intervene in this matter because the timing of notification of the pendency of this proceeding to LPEA, of the December holidays, advance notice requirements for publication of the Board’s agenda, and of the schedule for meetings of the Board of LPEA did not permit approval by the LPEA Board of Directors to intervene before the intervention deadline in a manner consonant with LPEA’s notice requirements for director action.

13. In particular, the following is the timing of LPEA’s notification and awareness of the DMEA complaint before the CoPUC:

- A. December 6, 2018 DMEA filed its complaint in this matter.
- B. December 10, 2018 Commission issued its Order to Satisfy or Answer the Complaint;
- C. December 12, 2019 Date of LPEA’s December Board Meeting (which required 10 days advance notice for matters to be placed on the Board’s agenda);
- D. January 3, 2019 LPEA management becomes aware of pendency of this proceeding;
- E. January 4, 2019 LPEA posted Board Meeting Agenda;
- F. January 6, 2019 LPEA deadline to post Board Meeting Agenda;
- G. January 9, 2019 Intervention Deadline;
- H. January 16, 2019 LPEA Board meeting where LPEA Board of Directors authorized its CEO to take action to intervene in this matter.

I. January 24, 2019 Date of filing of this motion.

As shown above, the LPEA Board was not able to review the Complaint in this matter prior to January 3, 2019, and authorized the filing of this motion at the earliest opportunity thereafter. In addition, this matter was complicated as LPEA was not able to use utilize the services of its General Counsel in the prosecution of this matter in accordance with the Colorado Rules of Professional Conduct, so that retention of special counsel in this matter was required.

14. Intervention by LPEA will not unduly broaden the issues or delay the proceedings. There are, at present, many parties seeking intervention or status as amici curiae. Most of the motions filed by Tri-State member cooperatives seek to support the position of Tri-State in this matter. LPEA, on the other hand, represents the interests of a Tri-State member cooperative which is generally aligned with DMEA in this matter. Motions for intervention have not yet been ruled upon, and there will be no prejudice to Tri-State, nor to any other party, from this late intervention. A status conference has not been held in this matter, nor has a final procedural schedule in this matter been ordered.

15. LPEA does not currently know the full extent and nature of evidence it will bring forward in this proceeding. LPEA reserves the right to bring forth evidence as its interests may appear.

16. LPEA accepts the record as it exists on the date of the filing of this Motion and Entry of Appearance.

17. The law firm of Dietze and Davis, P.C. enters its appearance on behalf of LPEA. LPEA requests that notices of matters relating to this proceeding and copies of orders, testimony, exhibits, pleadings, discovery, and all other relevant communications be served upon the following:

Karl F. Kumli, III
Gabriella Stockmayer
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And, for electronic service only, also
Graciela Franco Maldonado
Email: gracie@dietzedavis.com

Please also include on the service list the following individuals:

Mike Dreyspring, Chief Executive Officer, LPEA
Bob Lynch, President, Board of Directors, LPEA
Ron Meier, LPEA Manager of Engineering and Member Relations
Justin Talbot, LPEA Operations Manager
Jerry Wills, LPEA Pagosa Springs District Manager

Email: Mike Dreyspring: mdreyspring@lpea.coop;
Bob Lynch: BLynch@lpea.coop;
Ron Meier: RMeier@lpea.coop;
Justin Talbot: JTalbot@lpea.coop;
Jerry Wills: jcwills@lpea.coop

Wherefore, LPEA requests that the Commission issue an order granting LPEA's intervention in the above-captioned proceeding and conferring upon LPEA party status and all associated rights of such status as an intervenor in this proceeding.

Respectfully submitted this 24th day of January, 2019.

DIETZE AND DAVIS, P.C.

By: 

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**FOR LA PLATA ELECTRIC ASSOCIATION,
INC.**

CERTIFICATE OF SERVICE

I, Graciela Franco Maldonado hereby certify that on this 23rd day of January, 2019, I served a true and correct copy of ***MOTION FOR LATE INTERVENTION AND ENTRY OF APPEARANCE OF LA PLATA ELECTRIC ASSOCIATION, INC.*** in Proceeding No. 18F-0866E upon each of the parties through the E-Filing system or by other means in accordance with applicable law.

/s/ Graciela Franco Maldonado